

CIS/367/2003

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I find that the decision of the appeal tribunal ("the tribunal"), given on 21 August 2002, erred in point of law. I allow the claimant's appeal. Under the provisions of section 14(8)(a) of the Social Security Act 1998, I set aside the tribunal's decision, and substitute my own decision as follows:

"The claimant is entitled to the carer premium under paragraph 14ZA(1) of Schedule 2 to the Income Support (General) Regulations 1987 from 3 April 2000 when Statutory Instrument 681/2000 came into effect."

2. The claimant is a woman who had been in receipt of income support, together with invalid care allowance in respect of caring for her disabled daughter. She reached the age of 60 on 17 May 1988 following which she was in receipt of retirement pension, and her payment of invalid care allowance ceased. On 1 October 1990, a carer premium became available to persons in receipt of income support, and invalid care allowance was also introduced. In June 1992, it came to the attention of the Income Support Section that the claimant had in fact continued to have an underlying entitlement to receive invalid care allowance from 1988. The Citizens Advice Bureau, which was then advising the claimant, requested that the claimant should be entitled to the carer premium backdated to 1 October 1990. This was accepted, and arrears calculated from 1 October 1990 were issued to the claimant in July 1992, and thereafter an allowance for the carer premium was subsequently included in her weekly income support assessment.

3. On 8 October 2001, the Income Support Section received notification of possible overpayments of benefit from the Invalid Care Allowance Unit. The form stated that, during 1995, the Invalid Care Allowance Unit had examined invalid care allowance claims made by women between January 1984 and January 1989 where the claimants were aged between 60 and 65 and had been refused invalid care allowance on age grounds. Where underlying entitlement to invalid care allowance had been established, income support/minimum income guarantee sections had been notified, so that consideration could be given to awarding carer premiums to those claimants. However, the carer premium should not have been awarded on some of these cases as they related to claims which had been made before 1 October 1990, the date of introduction of carer premium; claims made before that date were subject to a cut-off provision. Cases were therefore being investigated where:

- (a) there was an underlying invalid care allowance entitlement;
- (b) invalid care allowance had not been in payment since 1 October 1990 and
- (c) invalid care allowance had been claimed before 1 October 1990.

The form continued with advice on dealing with any such cases.

4. On 11 December 2001, the Invalid Care Allowance Unit confirmed that invalid care allowance had ceased to be paid to the claimant before 1 October 1990 because another benefit was in payment, in this case retirement pension, to which the provisions of the Social

